

AMENDED IN SENATE JULY 1, 2005

AMENDED IN ASSEMBLY APRIL 20, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 1767

**Introduced by Committee on Revenue and Taxation (Klehs
(Chair), Canciamilla, Jones, and Lieber)**

March 17, 2005

An act to amend Sections 17049, 18670, 19950, and 21018 of, and to add Section 19136.7 to, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as amended, Committee on Revenue and Taxation. Franchise Tax Board: administration: collections and seizures: erroneous levies: required disclosures: claim of right.

(1) Existing law authorizes the Franchise Tax Board, as part of its administrative duties with respect to the collection of taxes, to seize assets of a delinquent taxpayer. Existing law authorizes the board to issue an order to specified financial institutions to withhold and remit liquid assets of a delinquent taxpayer in order to satisfy the tax obligations of that taxpayer.

This bill would require a financial institution, in compliance with an order to withhold assets, to liquidate specified noncash assets of a delinquent taxpayer, in a specified manner.

(2) Existing law authorizes a person to file a reimbursement claim against the board for bank charges assessed against that person as a result of an erroneous levy by the board.

This bill would expand this provision to include any 3rd-party fees or charges assessed against a person as a result of an erroneous levy,

erroneous processing action, or erroneous collection action by the board. This bill would provide that a penalty for underpayment of tax would not apply if the underpayment is based on an erroneous levy, erroneous processing action, or erroneous collection action by the board.

(3) Existing law generally provides that all taxpayer information obtained by the board is to remain confidential. Existing law provides exceptions to this general requirement, including a provision that requires the board, upon the request of the Department of Justice, a court, or any California law enforcement agency, to provide the address of any person represented to be a person for whom there is an outstanding arrest warrant.

This bill, in compliance with existing law, would require the board, upon the request of the Department of Justice, to provide the address of a ~~specified~~ sex offender, *as specified*.

(4) The Personal Income Tax Law, in specified conformity to federal income tax law, provides that if a taxpayer includes an item of income in gross income because it appears that the taxpayer has an unrestricted right to that income, and the taxpayer is subsequently required to repay that item, the taxpayer may deduct the repayment in the year the repayment is made and the taxes are to be calculated in a specified manner.

This bill would provide further conformity to federal income tax law with respect to dispositions of stock in trade and net operating losses, and by clarifying language relating to specified deductions and credits.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17049 of the Revenue and Taxation
2 Code is amended to read:
3 17049. (a) If an item of income was included in the gross
4 income of an individual for a preceding taxable year or years
5 because it appeared that the individual had an unrestricted right
6 to that item, a deduction is allowable for the taxable year based
7 on the repayment of the item by the individual during the taxable
8 year, and the amount of that deduction exceeds three thousand
9 dollars (\$3,000), then the tax imposed by this part for the taxable
10 year on that individual shall be the lesser of the following:

1 (1) The tax for the taxable year computed with that deduction.

2 (2) An amount equal to (A) the tax for the taxable year
3 computed without that deduction, minus (B) the decrease in tax
4 under this part for the preceding taxable year or years which
5 would result solely from the exclusion of the item or portion
6 thereof from the gross income required to be shown on the
7 California return of that individual for the preceding taxable year
8 or years.

9 (b) If the decrease in tax determined under subparagraph (B)
10 of paragraph (2) of subdivision (a) for the preceding taxable year
11 or years exceeds the tax imposed for the taxable year, computed
12 without the deduction, that excess shall be considered to be a
13 payment of tax on the last day prescribed for the payment of tax
14 for the taxable year, and shall be refunded or credited in the same
15 manner as if it were an overpayment for the taxable year.

16 (c) Subdivision (a) does not apply to any deduction allowable
17 with respect to an item which was included in gross income by
18 reason of the sale or other disposition of stock in trade of the
19 taxpayer, or other property of a kind which would properly have
20 been included in the inventory of the taxpayer if on hand at the
21 close of the prior taxable year, or property held by the taxpayer
22 primarily for sale to customers in the ordinary course of his or
23 her trade or business.

24 (d) If the tax imposed by this part for the taxable year is the
25 amount determined under paragraph (2) of subdivision (a), then
26 the deduction referred to in subdivision (a) shall not be taken into
27 account for any purpose of this part, or Part 10.2 (commencing
28 with Section 18401), other than this section.

29 (e) For purposes of determining whether paragraph (1) or
30 paragraph (2) of subdivision (a) applies, in any case where the
31 exclusion referred to in subparagraph (B) of paragraph (2) of
32 subdivision (a) results in a net operating loss or capital loss for
33 the prior taxable year, or years, that loss shall, for purposes of
34 computing the decrease in tax for the prior taxable year, or years,
35 under subparagraph (B) of paragraph (2) of subdivision (a), be
36 carried over to the same extent and in the same manner as is
37 provided under Section 17276, 17276.1, 17276.2, 17276.4,
38 17276.5, or 17276.7, or Section 1212 of the Internal Revenue
39 Code, as applicable for California purposes, except that no
40 carryover beyond the taxable year shall be taken into account.

(f) For purposes of this part, the net operating loss or capital loss described in subdivision (e) shall, after the application of paragraph (1) or (2) of subdivision (a) for the taxable year, be taken into account under Section 17276, 17276.1, 17276.2, 17276.4, 17276.5, or 17276.7, or Section 1212 of the Internal Revenue Code, as applicable for California purposes, for taxable years after the taxable year to the same extent and in the same manner as either of the following:

(A) A net operating loss sustained for the taxable year, if paragraph (1) of subdivision (a) applied.

(B) A net operating loss or capital loss sustained for the prior taxable year, or years, if paragraph (2) of subdivision (a) applied.

(g) Regulations promulgated by the Secretary of the Treasury under Section 1341 of the Internal Revenue Code shall apply, except to the extent that those regulations conflict with this section, provisions of this part, or with regulations promulgated by the Franchise Tax Board.

SEC. 2. Section 18670 of the Revenue and Taxation Code is amended to read:

18670. (a) The Franchise Tax Board may by notice, served personally or by first-class mail, require any employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter, or a political body not a subdivision or agency of the state, having in their possession, or under their control, any credits or other personal property or other things of value, belonging to a taxpayer or to an employer or person who has failed to withhold and transmit amounts due pursuant to this article, to withhold, from the credits or other personal property or other things of value, the amount of any tax, interest, or penalties due from the taxpayer or the amount of any liability incurred by that employer or person for failure to withhold and transmit amounts due from a taxpayer under this part and to transmit the amount withheld to the Franchise Tax Board at the times that it may designate. However, in the case of a depository institution, as defined in Section 19(b) of the Federal Reserve Act (12 U.S.C.A. Sec. 461(b)(1)(A)), amounts due from a taxpayer under this part shall be transmitted to the Franchise Tax Board not less than 10 business days from receipt of the notice. To be effective, the notice shall state the

amount due from the taxpayer and shall be delivered or mailed to the branch or office reported in information returns filed with the Franchise Tax Board, or the branch or office where the credits or other property is held, unless another branch or office is designated by the employer, person, officer or department of the state, political subdivision or agency of the state, including the Regents of the University of California, a city organized under a freeholders' charter or a political body not a subdivision or agency of the state.

(b) (1) At least 45 days before sending a notice to withhold to the address indicated on the information return, the Franchise Tax Board shall request a depository institution to do either of the following:

(A) Verify that the address on its information return is its designated address for receiving notices to withhold.

(B) Provide the Franchise Tax Board with a designated address for receiving notices to withhold.

(2) Once the depository institution has specified a designated address pursuant to paragraph (1), the Franchise Tax Board shall send all notices to that address unless the depository institution provides notification of another address. The Franchise Tax Board shall send all notices to withhold to a new designated address 30 days after notification.

(3) Failure to verify or provide a designated address within 30 days of receiving the request shall be deemed verification of the address on the information return as the depository institution's designated address.

(c) (1) Notwithstanding Section 8112 of the Commercial Code and Section 700.130 of the Code of Civil Procedure, when the Franchise Tax Board, pursuant to this section or Section 18670.5, issues a levy upon, or requires by notice, any person, financial institution, or securities intermediary, as applicable, to withhold all, or a portion of, a financial asset for the purpose of collecting a delinquent tax liability, the person, financial institution, or securities intermediary, as defined in Section 8102 of the Commercial Code, that maintains, administers, or manages that asset on behalf of the taxpayer, or has the legal authority to accept instructions from the taxpayer as to the disposition of that asset, shall liquidate the financial asset in a commercially reasonable manner within ~~30~~ 90 days of the issuance of the order

1 to withhold. Within five days of liquidation, the person, financial
2 institution, or securities intermediary, as applicable, shall remit to
3 the Franchise Tax Board the proceeds of the liquidation, less any
4 reasonable commissions or fees, or both, which are charged in
5 the normal course of business.

6 (2) If the value of the financial assets to be liquidated ~~exceed~~
7 *exceeds* the tax liability, the taxpayer may, within ~~10~~ 60 days
8 after the service of the order to withhold upon the person,
9 financial institution, or securities intermediary, instruct the
10 person, financial institution, or securities intermediary as to
11 which financial assets are to be sold to satisfy the tax liability. If
12 the taxpayer does not provide instructions for liquidation, the
13 person, financial institution, or securities intermediary shall
14 liquidate the financial assets in a commercially reasonable
15 manner and in an amount sufficient to cover the tax liability, and
16 any reasonable commissions or fees, or both, which are charged
17 in the normal course of business, beginning with the financial
18 assets purchased most recently.

19 (3) For purposes of this section, a financial asset shall include,
20 but not be limited to, an uncertificated security, certificated
21 security, or security entitlement as defined in Section 8102 of the
22 Commercial Code, a security as defined in Section 8103 of the
23 Commercial Code, or a securities account as defined in Section
24 8501 of the Commercial Code.

25 (d) Any corporation or person failing to withhold the amounts
26 due from any taxpayer and transmit them to the Franchise Tax
27 Board after service of the notice shall be liable for those
28 amounts. However, in the case of a depository institution, if a
29 notice to withhold is mailed to the branch where the account is
30 located or principal banking office, the depository institution
31 shall be liable for a failure to withhold only to the extent that the
32 accounts can be identified in information normally maintained at
33 that location in the ordinary course of business.

34 SEC. 3. Section 19136.7 is added to the Revenue and
35 Taxation Code, to read:

36 19136.7. (a) No additions to tax shall be made under Section
37 19136 or ~~Section~~ 19142 with respect to any underpayment of an
38 installment for a taxable year, to the extent that the underpayment
39 was created or increased as the direct result of an erroneous levy,

1 erroneous processing action, or erroneous collection action by the
2 Franchise Tax Board.

3 (b) The Franchise Tax Board shall implement this section in a
4 reasonable manner.

5 SEC. 4. Section 19550 of the Revenue and Taxation Code is
6 amended to read:

7 19550. (a) Pursuant to Section 817.5 of the Penal Code, the
8 Franchise Tax Board, upon request from the Department of
9 Justice, a court, or any California law enforcement agency and in
10 a form and manner prescribed by the Franchise Tax Board, shall
11 provide to the Department of Justice, the court, or the law
12 enforcement agency the address of any person represented to be
13 a person for whom there is an outstanding arrest warrant.

14 (b) (1) Pursuant to Section 290.9 of the Penal Code, the
15 Franchise Tax Board; shall, upon request from the Department of
16 Justice, provide to the Department of Justice the address of any
17 person represented to be a person who is in violation of his or her
18 duty to register under Section 290 of the Penal Code.

19 (2) This subdivision shall be operative with respect to requests
20 made on or after January 1, 2005, pursuant to Section 290.9 of
21 the Penal Code, as added by Section 1 of Chapter 127 of the
22 Statutes of 2004.

23 SEC. 5. Section 21018 of the Revenue and Taxation Code is
24 amended to read:

25 21018. (a) A person may file a claim with the board for
26 reimbursement of charges or fees imposed on the person by an
27 unrelated business entity as the direct result of an erroneous levy,
28 erroneous processing action, or erroneous collection action by the
29 board. Charges that may be reimbursed include an unrelated
30 business entity's usual and customary charge for complying with
31 the levy instructions and reasonable charges for overdrafts that
32 are a direct consequence of the erroneous levy, erroneous
33 processing action, or erroneous collection action and are paid by
34 the person and not waived by the unrelated business entity or
35 otherwise reimbursed. Each claimant applying for reimbursement
36 shall file a claim with the board which shall be in such form as
37 may be prescribed by the board. In order for the board to grant a
38 claim, the board shall determine that both of the following
39 conditions have been satisfied:

1 (1) The erroneous levy, erroneous processing action, or
2 erroneous collection action was caused by an error made by the
3 board.

4 (2) Prior to the erroneous levy, erroneous processing action, or
5 erroneous collection action, the person responded to all contacts
6 by the board and provided the board with any requested
7 information or documentation sufficient to establish the person's
8 position. This provision may be waived by the board for
9 reasonable cause.

10 (3) The charge or fee has not been waived by the unrelated
11 business entity or otherwise reimbursed.

12 (b) Claims pursuant to this section shall be filed within 90
13 days from the date of the erroneous levy, erroneous processing
14 action, or erroneous collection action. Within 30 days from the
15 date the claim is received, the board shall respond to the claim. If
16 the board denies a claim, the claimant shall be notified in writing
17 of the reason or reasons for the denial of the claim. The board
18 may extend the period for filing a claim under this section.

19 (c) Charges and fees that may be reimbursed under the
20 authority of this section are limited to the usual and customary
21 charges and fees imposed by a business entity in the ordinary
22 course of business.